



U.S. Embassy's Quarterly E-Bulletin

September 2003, Volume 1, Issue 2

LINUS

Legal Innovations in the U.S.

Welcome to the second issue of **LINUS** - Legal Innovations in the U.S. - the U.S. Embassy's quarterly e-bulletin. Our goal is to provide you with timely and relevant information. **LINUS** will also enhance and expand your legal expertise by showcasing innovative legal practices, ideas, experiments, organizations, and references. While we recognize that the U.S. and Israel have different theories and practices of law, we also see many similarities. By sharing information on U.S. law, we hope to provide practices that you may be able to adapt and that will benefit both you and those whom you serve. We also hope that the dissemination of this information will raise awareness and encourage openness and debate. Our second edition of **LINUS** focuses on *Balanced and Restorative Models of Justice in the United States*.

The U.S. legal system reflects the growing complexity of its society. Due to complicated court cases, rapid technological changes, and increasing regulation, legal professionals today need to expand their knowledge and understand each other's constraints in order to provide more effective and efficient services to their clients, whether in the corporation or in the courtroom.

The rule of law, fundamental to the existence of a free and democratic society, is our area of focus and activity. Since 1995, the U.S. Embassy has brought together American and Israeli legal professionals to share ideas and processes. This exchange continues to enrich both U.S. and Israeli legal professionals, broadening awareness of alternative legal approaches and innovations.

Future e-bulletins will include the following topics:

- **Alternative Dispute Resolution**
- **Community Mediation Methods**
- **Ethics and the Law**
- **Innovative Court Practices**
- **Intellectual Property Rights**



U.S. Embassy's Quarterly E-Bulletin

LINUS, September 2003

Each bulletin will include a bibliography relating to that issue's central topic.

For the latest information on legal issues, please visit:

<http://israel.usembassy.gov/publish/law.html>

Through its Office of Public Affairs and The American Center's Information Resource Center, the U.S. Embassy offers a variety of activities to strengthen the public's understanding of American society; it also conducts educational and professional exchanges between the United States and Israel.

We welcome any comments on the content of this bulletin.

Please send your emails to fa@pd.state.gov.

Disclaimer of Liability:

The U.S. Embassy, the Office of Public Affairs, and The American Center do not provide legal assistance or advice. This bulletin is offered as a service to Israel's legal community. Every effort is made to provide accurate and complete information. The U.S. Embassy, the Office of Public Affairs, and The American Center assume no legal liability for the accuracy, completeness, or usefulness of any information or process disclosed herein and do not represent that use of such information or process would not infringe on privately owned rights.



BALANCED AND RESTORATIVE JUSTICE IN THE U.S.

An innovative, developing, and increasingly popular model influencing the future of community corrections, *restorative justice* is a way of responding to conflict, misbehavior, and crime to provide the most effective results for all who were affected. Used primarily in juvenile cases, *restorative justice* has emerged as a central justice issue in the last decade, requiring new skills and competencies, and a different set of expectations for corrections agencies, justice professionals, government, advocacy groups, and communities. Increasing frustration among victims of crime, their supporters, and citizens in general has led to the conclusion that the current criminal justice system does not always represent the best interests of victims and communities, nor does it provide them enhanced public safety, quality of life in their communities, or a legitimate voice and role in the justice process. Justice authorities are also alarmed at the overwhelming increase in the incarceration of offenders.

Although *restorative justice* had long been the normal practice in indigenous societies, it appeared in Western industrialized countries only in the early 1970s, gaining impetus in the late 1970s and 1980s from the victims' movement, from experiences with reparative sanctions and processes, and from the rise of informal neighborhood justice and dispute resolution/mediation programs. As a philosophy for the justice system, *restorative justice* guides professionals in the appropriate and equitable use of sanctions to ensure that offenders make amends to victims and the community. By the 1990s, at least 700 *restorative justice* programs were in place in Europe and 300 in the United States.

The balanced approach allows justice systems, particularly juvenile justice, and agencies to improve their capacity to protect the community and ensure accountability of the offender and the judicial process. It enables offenders to become competent and productive citizens. *Restorative justice*, the guiding philosophical framework for this vision, promotes maximum involvement of the victim, the offender, and the community in the justice process and presents a clear alternative to sanctions and intervention based on retributive or traditional treatment assumptions. Within the context of the *restorative justice* philosophy, the balanced approach model helps justice systems become more responsive to the needs of victims, offenders, and the community.



U.S. Embassy's Quarterly E-Bulletin

LINUS, September 2003

Restorative justice includes recognizing the conflict or harm (physical and relational) as much as possible and creating future accountability plans and/or agreements that will prevent the same wrong from being repeated. *Restorative justice* includes programs, processes, and procedures that are guided by specific principles.

Restorative justice has evolved from a little-known concept into a term used widely but in different ways. There is no doubt about its appeal, although the varied uses of the term cause some confusion. The umbrella term “*restorative justice*” has been applied to initiatives identified as restorative by some but not by others. Examples are sex-offender notification laws, victim impact statements, and the “right” of the murder victims family to be present at executions.

Juvenile justice systems based on the balanced approach differ from traditional systems in that the competency development, accountability, and community protection objectives prescribe clear outcomes directed at the three primary clients of juvenile justice: offenders, victims, and the community. These outcomes in turn provide the basis for developing concrete performance measures for gauging the success of juvenile justice systems, agencies, and interventions. These may be evaluated in the following terms:

- whether offenders make measurable improvements in their ability to function as conventional, productive citizens;
- how well the public is protected during the time the offender is under court supervision;
- whether victims are involved in the juvenile justice process in order for the offenders to understand the harm they have caused and to work to repay the victim and the community.

By promoting development of consensus on these new performance-based objectives and the need for balance in allocating resources to achieve goals directed at each client, the balanced approach helps agencies transcend traditional, unproductive conflicts between crime and control.

In a restorative framework, concepts like authority, responsibility, and accountability become concrete applications involving all who are affected by the crime, rather than abstract and unrealistic expectations externally imposed upon offenders. Inclusion is an underlying value that ensures that those most affected by the crime are at the forefront of decision-making throughout the processes. The opportunity for consensus-based dialogue in a safe, constructive atmosphere shows great promise for resolving conflict and moving toward healing the harms of the crime.



Basic principles for establishing a restorative justice model include:

- A decision by policy-makers to introduce *restorative justice* within their organizations, agencies, workgroups, community centers and schools;
- The necessity that stakeholders be educated in *restorative justice* principles of:

accountability: when an offense occurs, an obligation to the victim incurs;

community protection: the public has a right to a safe and secure community and must be protected during the time the offender is under juvenile justice supervision. The juvenile justice system must provide a range of intervention alternatives geared to the varying risks presented by the offenders;

competency development: juvenile offenders who come within the jurisdiction of the court should leave the system capable of being productive and responsible within the community;

balance: community, victim, and offender should receive balanced attention with all three gaining tangible benefits from their interactions with the juvenile justice system.

- Stakeholders need to analyze how *restorative justice* principles relate to conflicts, disputes, and offenses affecting them. If necessary, outside assistance should be involved;
- Case disposition should be based primarily on the victim's and the community's needs -- not solely on the offender's needs or culpability, the dangers he presents, or his crime;
- Because crime harms the victim and the community, the primary goals should be to repair the harm and heal the victim and the offender.

Restorative justice is ultimately about hope for today and for the future. In a world where justice is becoming a community issue, *restorative justice* is being defined by values identified collectively by all members of the community. Criminal justice systems need to work in partnership with people as supporters and facilitators of deeply held community values.



U.S. Embassy's Quarterly E-Bulletin

LINUS, September 2003

The following Web sites, articles, and bibliography introduce the subject of *Balanced and Restorative Justice* in the U.S.

Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice:

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the President and Congress through the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, as amended. Its goal is to provide national leadership in addressing the issues of juvenile delinquency and improving juvenile justice. On September 30, 1992, the OJJDP awarded a grant to Florida Atlantic University and a consortium of national juvenile justice experts to expand the focus of its juvenile restitution training and technical assistance program. This broad focus on developing balanced, community-based systems is designed to meet the challenge of using restorative sanctions and processes and related approaches as catalysts for change in the juvenile justice system.

<http://www.ncjrs.org/pdffiles/bal.pdf>

National Restorative Justice Training Institute, Center for Restorative Justice and Peacemaking, University of Minnesota:

The Institute provides training for professional and community volunteers in corrections and victim services. Trainers are nationally recognized *restorative justice* leaders and practitioners in the field.

<http://ssw.che.umn.edu/rjp/>

The Fresno County (California) Restorative Justice Framework:

In 1998, more than 20 leaders of Fresno County's leading governmental agencies and organizations, including the Probation Department, courts, County Administrative Office, District Attorney's Office, Public Defender's Office, Department of Human Services, city and county schools, Fresno City Police Department, and the Sheriff's Department endorsed the development of a community *restorative justice* plan.

<http://www.fresno.edu/pacs/docs/rjframe0201.pdf>



Victim-Offender Mediation Programs: An Exploration of Practice and Theoretical Frameworks:

Victim-offender mediation programs - structured encounters centered around a face-to-face meeting between crime victim and offender - have been the subject of increasing attention. Although considerable variation exists across programs, the common element is a direct voluntary encounter between crime victim and offender. The paper explores what is known from victim-offender mediation research as well as related literature about victim willingness to participate in such meetings and the research's significance for criminal justice practice.

<http://wcr.sonoma.edu/v1n1/gehm.html>

Sentencing & Corrections: Issues for the 21st Century:

Incorporating Restorative and Community Justice Into American Sentencing and Corrections:

Programs based on restorative and community justice principles have proliferated in the United States over the past decade simultaneously with tough-on-crime initiatives like three-strikes, truth-in-sentencing, and mandatory minimum laws. *Restorative justice* and community justice represent new ways of thinking about crime. The theories underlying *restorative justice* suggest that government should surrender its monopoly over responses to crime to those most directly affected - the victim, the offender, and the community.

<http://www.ncjrs.org/pdffiles1/nij/175723.pdf>

Victim-Offender Reconciliation Program - VORP:

Victim-offender mediation programs, also known as victim-offender reconciliation programs, bring offenders face-to-face with the victims of their crimes with the assistance of a trained mediator, usually a community volunteer. Crime is personalized as offenders learn the human consequences of their actions, and victims (who are sometimes forgotten within the criminal justice system) have the opportunity to speak their minds and their feelings to the one who most ought to hear them.

<http://www.vorp.com/>



U.S. Embassy's Quarterly E-Bulletin

LINUS, September 2003

Family Independence Agency: State of Michigan:

Michigan's Bureau of Juvenile Justice incorporated the philosophy of Balanced and Restorative Justice in 1998 and introduced its principles and practices into delinquency operations throughout the state.

http://www.michigan.gov/fia/0,1607,7-124-5452_7121_7198-18548--,00.html

Community and Support Services Division: Minnesota Department of Corrections:

The department works with interested communities by assisting them in developing a restorative justice approach to community safety.

<http://www.doc.state.mn.us/organization/commsupport/restorativejustice.htm>

National Institute of Corrections: U.S. Department of Justice:

The curriculum package offered at this site is designed to assist justice agencies and the public in building a restorative framework. In such a framework, concepts such as authority, responsibility, and accountability become concrete applications involving all who are affected and help users to refocus justice efforts so that their systems become truly responsible to the needs and interests of victims and communities.

<http://nicic.org/resources/topics/restorativejustice.aspx>

Restorative Justice Laws: State of Maryland:

In 1997, Maryland adopted legislation to change the purpose of the state's juvenile justice system to reflect balanced, restorative justice. It asserts that public safety, offender accountability, and competency are the cornerstones of juvenile justice. The act also makes parents of juveniles responsible for their children's behavior and accountable to the victims and the community.

<http://www.ncsl.org/programs/cj/cjl20598.htm>

Balanced and Restorative Justice Project:

BARJ is a nonprofit restorative justice training program funded by the U.S. Office of Juvenile Justice Delinquency Prevention and housed at the Community Justice Institute, Florida Atlantic University, Ft. Lauderdale. BARJ provides training, technical assistance, system leadership development, and community support to those interested in implementing restorative justice initiatives within their agencies or local communities.

<http://www.barjproject.org>



U.S. Embassy's Quarterly E-Bulletin

LINUS, September 2003

Department of Rehabilitation and Correction: State of Ohio:

Offender accountability - in the form of restitution, apology, victim/offender dialogue, community service - forces the offender to deal with his or her actions.

<http://www.drc.state.oh.us/CJ/cj1.htm>

Juvenile Probation and Court Services Department, Circuit Court of Cook County: State of Illinois:

This department has developed a series of pre- and post-adjudication programs in response to the balanced and *restorative justice* section of its Juvenile Justice Reform Act. The purpose of these programs is to hold juvenile offenders accountable for their conduct while, at the same time, helping them to develop life skills to enable them to become productive members of the community.

<http://www.cookcountycourt.org/services/programs/juvenile/balanced.html>

Center for Court Innovation: Community Justice Exchange:

The Community Justice Exchange is a clearinghouse of information about community justice. The site includes profiles of community justice projects, news articles about community justice, and searchable databases that track community justice programs around the country.

<http://www.communityjustice.org/exchange.asp>



U.S. Embassy's Quarterly E-Bulletin

LINUS, September 2003

The following articles or abstracts may be obtained on request at The American Center's Information Resource Center. For general information regarding the IRC, visit:

<http://israel.usembassy.gov/publish/accjer.htm>

The Stakes for Minority Groups in the Supreme Court's Review of Affirmative Action

Peter Schmidt and Will Potter. The Chronicle of Higher Education, June 6, 2003
(Abstract Available)

Restorative Justice: Mending the Fabric of Society: Advocates Point to a Better Way to Give Victims a Voice and Prevent Offenders' Return to Crime

(Nation). Lili LeGardeur. National Catholic Reporter, May 30 (Text Available)

Probation, Punishment and Restorative Justice: Should Altruism be Engaged in Punishment?

R.A. Duff. The Howard Journal of Criminal Justice, May 2003 (Abstract Available)

Restorative Justice as Strength-Based Accountability

Robert Ball. Reclaiming Children and Youth, Spring 2003 (Text Available)

Using Restorative Practices in Group Treatment

Mary Steiner and Matt Johnson. Reclaiming Children and Youth, Spring (Text Available)

Special Problems for Specialty Courts

Wendy N. Davis. ABA Journal, Feb. 2003

Restorative Justice and Responsive Regulation (Book Review)

Andrew Sanders. Modern Law Review, Jan. 2003

Restorative Justice: Ideas, Values, Debates (Book Review)

R.A. Carp. CHOICE: Current Reviews for Academic Libraries, Nov. 2002

Community-Based Mediation Programs: A Case Study and Comparison

Russell S. Harrison. International Journal of Public Administration, Nov. 2002 (Text Available)



U.S. Embassy's Quarterly E-Bulletin

LINUS, September 2003

Healing the Wounds of Crime. Restorative Justice Programs Offer Emotional Help to Both Victims and Offenders

Patrice Gaines. Utne Reader, Nov.-Dec. 2002 (Abstract Available)

Working with Male Batterers: A Restorative-Strengths Perspective

Katherine van Wormer and Susan G. Bednar. Families in Society: The Journal of Contemporary Human Services, Sept.-Dec. 2002 (Abstract and Text Available)

Apology, Justice, and Trauma Recovery

Cheryl Regehr. Journal of the American Academy of Psychiatry and the Law, Sept. 2002

Maryland Instituting "Restorative Justice" Programs

Daily Record (Baltimore, MD), April 20, 2002 (Text Available)

Restorative Justice: What Is It? Can It Work? What Do Women Think?

Stephanie Coward-Yaskiw. Herizons, Spring 2002 (Text Available)



LINUS, September 2003

Produced by:
The American Center Jerusalem
19 Keren Hayesod Street
Jerusalem
02-625-5755
<http://israel.usembassy.gov>

Felicity Aziz, Editor
fa@pd.state.gov

Gil Shimon, Design Director
gs@pd.state.gov